



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PACIFICA HOUSING ADVISORY
ASSOCIATION and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, RP, RR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on June 21, 2019 (the “Application”). The Tenant applied as follows:

- To dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 18, 2019 (the “Notice”);
- For an order that repairs be made to the unit; and
- For an order reducing rent for repairs, services or facilities agreed upon but not provided.

The Tenant filed an amendment dated June 27, 2019 seeking an order that the Landlord provide services or facilities required by the tenancy agreement or law.

The Tenant appeared at the hearing with the Advocate. The Tenant said he had two witnesses that were outside of the room until required.

The Agent and Manager appeared at the hearing for the Landlord.

Pursuant to rule 2.3 of the Rules of Procedure, I told the Tenant and Advocate at the outset that I would only consider the dispute of the Notice as the remaining issues were not sufficiently related to the dispute of the Notice and the dispute of the Notice would determine whether this tenancy will end or continue which may impact the relevance of the remaining issues. I have only considered the dispute of the Notice. The remaining issues are dismissed with leave to re-apply. This does not extend any time limits set out in the *Residential Tenancy Act* (the “Act”).

At this point in the hearing, the Tenant said the Advocate would be seeking to adjourn this matter and indicated that he would be exiting the telephone conference. The Tenant said he could not participate in a telephone conference and would be exiting. I told the Tenant I would go through further preliminary matters and then hear any preliminary applications. I told the Tenant I was not giving him permission or allowing him to exit the conference call. I told the Tenant I could not stop him from exiting the conference call but that I would be proceeding without him if he chose to exit the conference call. I told the Tenant that if he wanted an adjournment, that was an application he or the Advocate would have to make and that I would then make a decision about it. The Tenant chose to exit the conference call despite my warnings that I would proceed without him. The Tenant hung up the phone.

The Advocate confirmed he had full authority to appear for the Tenant and provide evidence on the Tenant's behalf. I proceeded with the hearing with the Advocate, Agent and Manager present. I note that the Advocate advised at the end of the hearing that he would not be calling witnesses on the Tenant's behalf and so I did not hear from the two witnesses mentioned by the Tenant at the outset.

I explained the hearing process to the parties who did not have questions in this regard. The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. The Agent confirmed the Landlord received the hearing package and stated that the Tenant's evidence was received July 29, 2019. The Advocate confirmed the Tenant received the Landlord's evidence although said the Tenant had not provided him with a copy of it.

The Advocate sought an adjournment of the hearing. I understood him to say the basis for this was that the Tenant now has a lawyer and the Tenant wants an in-person hearing. The Agent did not agree to an adjournment and noted that the Landlord has already waited two months for this hearing.

The Tenant had submitted a letter from a doctor dated August 13, 2019 stating that the Tenant requires an advocate to assist him which has not been provided to the Tenant due to high demand and summer vacation. The letter states that the Tenant is not able to communicate effectively over the phone and therefore the hearing should be conducted in-person.

I declined to adjourn the hearing on the basis that the Tenant now has a lawyer. There is no evidence before me showing the Tenant took reasonable steps to obtain legal counsel back in June when he received the Notice. In the absence of such evidence, I am not satisfied the Tenant did take steps to obtain legal counsel for the hearing. The Tenant had almost two months to obtain legal counsel. I find this to be sufficient time. Further, if the Tenant has now obtained legal counsel, legal counsel should have appeared at the hearing and sought an adjournment if they intended to represent the Tenant on this matter.

As well, the Tenant was able to obtain assistance on this matter as he had the Advocate appear with him. The Advocate confirmed he had authority to appear for the Tenant and provide evidence on his behalf. The Advocate was aware of this matter and did provide evidence on the Tenant's behalf. I find the Tenant had assistance at this hearing and there was no basis to adjourn in this regard.

I declined to adjourn the hearing on the basis that the Tenant wants an in-person hearing. As set out in rules 6.3 to 6.5 of the Rules, it was open to the Tenant to make an application to the RTB seeking an in-person hearing. Rule 6.4 states:

A party may submit a request that a hearing be held in a format other than telephone conference call.

An applicant must submit such a request in writing to the Residential Tenancy Branch directly or through a Service BC Office with supporting documentation within three days of the notice of hearing being made available by the Residential Tenancy Branch. A respondent must submit such a request in writing with supporting documentation within three days of receiving the Notice of Dispute Resolution Proceeding or being deemed to have received the Notice of Dispute Resolution Proceeding.

[emphasis added]

The RTB records show the notice of hearing was available to the Tenant June 26, 2019. The Tenant had until July 02, 2019 to make this application given the dates involved. The Tenant did not do so. The Tenant was not permitted to wait until the hearing date to apply for an adjournment on the basis of wanting an in-person hearing. The Tenant was required to go through the proper process for requesting this.

I also note that these parties had a prior arbitration on March 14, 2019 which was conducted by conference call. I also note that it was open to the Tenant to be present with the Advocate in the same room during the hearing such that the Advocate could assist the Tenant if needed. The Tenant chose not to appear with the Advocate and to instead call in on his own. The Advocate did not provide a further explanation about these issues.

I considered the criteria for granting an adjournment set out in rule 7.9 of the Rules. I find the need for an adjournment arose out of the Tenant's failure to request an in-person hearing through the proper process within the time period set out in the Rules. I was not satisfied an adjournment was required to provide the Tenant a fair opportunity to be heard as he had the Advocate appear to assist him and could have chosen to appear with the Advocate in the same room. Further, as stated, the last hearing occurred by conference call and therefore I am not satisfied having this hearing by conference call would cause unfairness. Lastly, there would be prejudice to the Landlord in granting an adjournment as this dispute will determine whether this tenancy ends or continues. As pointed out by the Agent, the Landlord has already waited almost two months for this hearing. It would be prejudicial to the Landlord to require them to wait longer for a disposition of this matter.

The adjournment was denied and I proceeded with the hearing.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered the relevant documentary evidence and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, should the Landlord be issued an Order of Possession based on the Notice?

Background and Evidence

The Agent and Advocate agreed there is a tenancy agreement between the Landlord and Tenant in relation to the rental unit. The Agent testified that the tenancy started in September of 2016 with a different landlord and that the Tenant was transferred to a new unit in the building June 01, 2017. The Advocate agreed with this. The Agent and Advocate agreed this is a month-to-month tenancy.

The parties agreed the Tenant was responsible for paying \$461.75 in rent but that this was reduced to \$441.75 given a \$20.00 per month deduction ordered in a prior arbitration. Both agreed rent is due on the first day of each month.

The Notice states that the Tenant failed to pay \$220.25 in rent due June 18, 2019. It is addressed to the Tenant and refers to the rental unit address. It is signed and dated by an agent for the Landlord. It has an effective date of July 02, 2019. The Agent advised that the \$220.25 listed on the Notice was due June 01, 2019 and that the June 18, 2019 date was a mistake due to how the Notice was generated. The Advocate did not take issue with the form or content of the Notice when asked.

The Agent testified that he posted both pages of the Notice on the door of the rental unit June 18, 2019. The Landlord submitted a Proof of Service signed by a witness confirming this. The Advocate did not know when or how the Tenant received the Notice.

The Agent provided the following outline of what rent was due and what rent was paid by the Tenant from April to August of 2019:

April: Rent \$461.75
Paid \$375.00

(\$86.75 outstanding)

May: Rent \$441.75
Paid \$375.00

(\$66.75 outstanding)

June: Rent \$441.75
Paid \$375.00

(\$66.75 outstanding)

The Agent testified that the following payments were made after the Notice was issued:

July 02, 2019 - \$375.00 for July rent
July 30, 2019 - \$375.00 for August rent
August 14, 2019 - \$335.00 for outstanding rent amount

The Agent testified that there is still \$18.75 in rent outstanding.

The Advocate agreed with the above outline of rent owing and payments made.

The Advocate advised that the basis for the Tenant's dispute of the Notice is that the Landlord stopped security for the building and has not been helpful with required repairs. The Advocate was not able to point to a section of the *Act* that allows the Tenant to withhold rent for these reasons and acknowledged that there is no section of the *Act* that allows for this.

The Agent submitted that the Tenant had no authority under the *Act* to withhold rent and said he tried to explain this to the Tenant.

The Agent sought an Order of Possession effective August 31, 2019.

Analysis

Section 26(1) of the *Act* requires tenants to pay rent when it is due under the tenancy agreement unless they have a right to withhold rent under the *Act*.

There are only five sections in the *Act* that allow tenants to withhold rent and they include:

1. If a landlord accepts a security deposit or a pet damage deposit that is greater than half the monthly rent, the tenant can deduct the overpayment from rent pursuant to section 19(2) of the *Act*;

2. If a landlord does not reimburse a tenant as required for emergency repairs, the tenant can deduct the amount from rent pursuant to section 33(7) of the *Act*;
3. If a landlord collects a rent increase that does not comply with Part 3 of the *Act*, the tenant can deduct the increase from rent pursuant to section 43(5) of the *Act*;
4. When a tenant receives a notice to end tenancy under section 49 of the *Act* and is entitled to one month of free rent, the tenant can withhold the last month's rent pursuant to section 51(1.1) of the *Act*; and
5. Where a tenant has received an order from an arbitrator reducing their past or future rent pursuant to section 65(1)(f) of the *Act*.

Section 46 of the *Act* allows a landlord to end a tenancy when tenants fail to pay rent. The relevant portions of section 46 state:

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2) A notice under this section must comply with section 52...

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution...

Section 55(1) of the *Act* requires an arbitrator to issue an Order of Possession when a tenant has disputed a notice to end tenancy and the application is dismissed or the notice is upheld. The notice must comply with section 52 of the *Act*.

The parties agreed on the rent amounts owing and rent amounts paid for April to June. Therefore, I find the Tenant was required to pay \$461.75 for rent in April by April 01, 2019 and \$441.75 in rent for each of May and June by the first day of these months. Given the agreement of the Agent and Advocate on the rent amounts paid, I find the

Tenant failed to pay \$86.75 in rent in April and \$66.75 in rent for each of May and June. I find \$220.25 was outstanding as of June 02, 2019.

The Advocate advised that the Tenant disputed the Notice because of lack of security in the building and the Landlord not being helpful with repairs. The Advocate acknowledged that the Tenant did not have authority under the *Act* to withhold rent. I agree as the reasons provided are not reasons under the *Act* to withhold rent. I find the Tenant was required to pay \$461.75 for April rent and \$441.75 for May and June rent under section 26(1) of the *Act* and that section 46(3) of the *Act* does not apply.

Given the Tenant did not pay rent as required from April to June, the Landlord was entitled to serve him with the Notice pursuant to section 46(1) of the *Act*.

Based on the undisputed testimony of the Agent and Proof of Service, I find the Tenant was served with the Notice on June 18, 2019 in accordance with section 88(g) of the *Act*. The Tenant is deemed to have received the Notice June 21, 2018 pursuant to section 90(c) of the *Act*. The Tenant must have received the Notice as he disputed it and submitted it as evidence.

Upon a review of the Notice, I find it complies with section 52 of the *Act* in form and content as required by section 46(2) of the *Act*.

I note that the due date for the rent is wrong as it is June 18, 2019 not June 01, 2019. However, I do not find this affects the validity of the Notice as the Tenant would have been aware of when rent was due. Further, the Advocate did not take issue with the form or content of the Notice.

The Tenant had five days from receipt of the Notice on June 21, 2019 to pay or dispute it under section 46(4) of the *Act*.

The parties agreed that the next rent payment made by the Tenant after the Notice was issued was on July 02, 2019 for July rent. This was not within the five-day period.

The Tenant disputed the Notice. The Advocate advised that the Tenant's dispute was based on the security and repair issue. As stated above, neither of these issues entitled the Tenant to withhold rent under the *Act*. The dispute of the Notice is dismissed without leave to re-apply.

Given I have dismissed the Tenant's dispute of the Notice, and found the Notice complies with section 52 of the *Act*, the Landlord is entitled to an Order of Possession pursuant to section 55(1) of the *Act*. I issue the Landlord an Order of Possession effective at 1:00 p.m. on August 31, 2019.

Conclusion

The Tenant's dispute of the Notice is dismissed. The Landlord is issued an Order of Possession effective at 1:00 p.m. on August 31, 2019. This Order must be served on the Tenant. If the Tenant does not comply with this Order, it may be filed in the Supreme Court and enforced as an order of that court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: August 16, 2019

Residential Tenancy Branch